

Service Date: August 15, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of JAMES M. SHERMAN DBA SHERMAN'S)	
SERVICE AND SUPPLY, Sunburst, MT)	DOCKET NO. T-9539
for a Class D Montana Intrastate)	
Certificate of Public Convenience)	ORDER NO. 6004
and Necessity.)	

* * * * *

FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Gary M. Zadick, P.O. Box 1746, Great Falls, Montana 59403

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

On April 6, 1990 the Commission received an application from James M. Sherman, dba Sherman's Service and Supply, Sunburst, Montana, for a Certificate of Public Convenience and Necessity, Class D, authorizing transportation of solid waste and garbage between all points and places in Toole County, Montana.

Applicant presently has PSC Certificate No. 8989 which authorizes transportation of solid waste and garbage service to Sweetgrass, Montana and all points within a 25 mile radius of Sunburst, Montana, all in Toole County.

Applicant's filing was certified and supported by Gary R. Mercer, on behalf of First Bank of Shelby, Shelby, Montana.

On or about May 18, 1990 notice of this application was published in the legal section of the Shelby Promoter, Shelby, Montana.

After publication, the Commission received protests on behalf of the City of Shelby, City of Conrad, City of Cut Bank and Pondera County. The basis for the protests was that these entities were in the process of forming a solid waste district encompassing the area and granting the authority would complicate the process.

On June 12, 1990 the Commission issued a Notice of Public Hearing which was duly published on or about June 22, 1990 in the Shelby Promoter.

Pursuant to notice, the Commission conducted a public hearing beginning at 9:00 a.m. on July 12, 1990 at the Marias Electric Co-op, 910 Roosevelt Highway, Shelby, Montana. Danny Oberg, Commissioner, presided as hearing examiner.

Gary M. Zadick, representing the Applicant, waived the requirement for a proposed order and stipulated to a final order. No counsel appeared on behalf of the Protestants.

FINDINGS OF FACT

Testimony of Applicant

Applicant James M. Sherman, Sunburst, Montana appeared and testified in support of the application. He was born in 1937 and raised in Toole County. He has a shop in Sunburst and owns a landfill site four miles south, two miles east of Sunburst. His landfill could handle all the solid waste of Toole County except Shelby for 15 years, and he could expand his capacity further, he testified.

Applicant testified that he owns a 1977, 110 Chevy one-ton truck, and he submitted a picture as Applicant's Exhibit No. 1. He presently uses this truck two days per week, three to four hours each time. He wants to expand service to farmers from Galata to Devon, Montana. Galata, Devon and Dunkirk have requested service. First State Bank of Shelby specially requested Applicant to take waste to a landfill. He is the only licensed garbage hauler in Toole County. Applicant submitted as exhibits petitions and letters of a number of persons and businesses desiring his service.

Applicant further testified that he was not proposing to offer services to Cut Bank, Conrad (both not in Toole County) or Pondera County, Protestants herein. He testified that to his knowledge, Shelby might opt into a Solid Waste District and would not be able to use his landfill if in the district. The district would not offer pick-up service outside Shelby. Applicant testified that he would try to offer his services at the same rates for new customers although they would be farther.

Upon recall, Applicant testified to clarify that First State Bank of Shelby has a need to have papers of a delicate nature buried in a landfill. The bank required that these papers involving privacy matters be handled so that they were not in public view. The bank could not obtain this service in Shelby, but Applicant could provide it.

Public Testimony

John Alstad, County Commissioner for Toole County, testified in support of the application for all of Toole County. He testified that Toole County elected not to participate in a multi-county solid waste district. Mr. Alstad sponsored a letter on behalf of the county commissioners including Chairman Harry A. Simons and Mrs. Geneva Sisk. The county commissioners support the application, find that Applicant has provided good service to those Toole County residents within his present authority, and state that if the authority is expanded, Applicant would provide needed service to the remainder of Toole County residents.

Carl Westermarck, Box 777, Shelby, Montana (but actually living in Dunkirk) testified as to concerns about where he could haul garbage if the Shelby landfill is closed by the Solid Waste District. He wanted to be assured that there would be a landfill he could haul to. He testified that if Applicant has the facilities, there will be plenty of garbage to haul.

Thomas Hammerbacker, Mayor of Conrad, Montana, located in Pondera County, testified in opposition to the application, as authorized by the City Council. He opposed an authority which would include all of Toole County, but had no objection to any authority outside the Shelby city landfill district. One concern was that the City of Conrad was considering bidding out hauling to private industry. If there was only one hauling authority, there would be only one bidder, he stated. If the City of Shelby would opt out of the district, however, there would be no opposition, he testified. On cross-examination, Mr. Hammerbacker testified that if the City of Conrad were in a landfill district, Applicant would not serve it. Conrad has municipal service. If the interested entities formed a Solid Waste District, it would not serve door to door but would use dumpsters.

Harlan McKechnie, Devon Star Route, Shelby, Montana, resides in Dunkirk. He testified in support of the application. Applicant's rates to haul garbage would be more reasonable than going to a dumpster, assuming that one could get to a dumpster. Mr. McKechnie favored competition, would not like the monopoly of a district, and would prefer to do business with Applicant who did quote definite rates. He testified as to uncertainty as to what service a multi-county district would offer at what rates, if it were formed. The access, cost and convenience were factors in Mr. McKechnie's support of the application.

Rex Reynolds, Sweetgrass, Montana, testified in support of the application. He has been both a commercial and residential user of Applicant's authorized service in Sweetgrass. Applicant has provided good and reasonable service.

Paul F. Nichols, Sunburst, Montana, testified in support of the application to expand authority. He is satisfied with the service Applicant provides in Sunburst and would like to see him able to continue to provide service and to expand.

Geneva Sisk, County Commissioner of Toole County, residing in Galata, testified as a community person and ranch wife. The Galata community has three businesses, a small school and a church. It is up to the individuals to transfer the small amount of garbage to a private pit. Applicant's proffered pick-up service would be a convenience. If Galata had to close the garbage pit, the service would be a lot more convenient than going to a dumpster, according to testimony.

DISCUSSION, ANALYSIS AND DECISION

If after a hearing, the commission finds from the evidence that the public convenience and necessity require authorizing the proposed service, the Commission shall grant the authority and issue a certificate. Before deciding whether to grant or deny requested authority, the Commission must first consider the transportation furnished by existing transportation, the likelihood of the proposed service being permanent and continuous 12 months of the year, and the effect of the proposed service upon existing carriers and/or transportation service. For purposes of Class D certificates a determination of public convenience and necessity may include a consideration of competition. See § 69-12-323, MCA.

The Commission first examines whether Applicant has established a public need for the proposed expanded service. Testimony and letters amply support the need and the desire of the public in Toole County for pick-up garbage service.

Next, the Commission examines whether existing carriers can or will meet this public need. The Commission finds that there is no certificated authority in Toole County to provide this service, nor is there a municipality in Toole County offering this service. Therefore, the public convenience and necessity is not being met by existing carriers or authorized service.

The Commission finds that Applicant is fit and able to provide garbage service to Toole County.

Presently, he is providing service to Sweetgrass and within a 25 mile radius of Sunburst three to four hours two days a week. The picture of his 1977 one-ton truck submitted as an exhibit reveals apparently well-kept, sound equipment. Present customers were well-satisfied, according to testimony. Applicant testified that his landfill could accommodate all the garbage in Toole County, except the City of Shelby, for 15 years, with room for expansion. Applicant has assets of \$60,000 and liability of \$11,390.

The foregoing discussion has represented traditional analysis in determining public convenience and necessity, implicit in § 69-12-323, MCA. As well stated in Pan American Bus Lines Operation, 1 M.C.C. 190 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

1 M.C.C. at 203.

Section 69-12-323(2)(b), MCA, provides an additional factor for consideration when Applicant requests Class D certificate for authority to haul garbage, i.e., that the Commission consider competition. Letters on behalf of the cities of Cut Bank, Conrad and Shelby, as well as the county of Pondera, expressed opposition to the application in Toole County. The basis of opposition was the speculation that this authority as expanded to Toole County in entirety would jeopardize the formulation of an area-wide landfill district. A county commissioner testified, however, that the Toole County Commission elected not to participate in such a district. There was no testimony on behalf of the City of Shelby (the only city above-named in Toole County) in opposition to the application. The letter itself was not specific.

The Commission finds, ultimately, that the speculative opposition to this application does not defeat the request for this authority. Competition is a consideration if a new applicant desires to obtain authority where there is existing Class D authority to provide the garbage hauling service. The cities and County of Pondera fear that this application to expand Applicant's present garbage hauling authority to the entire Toole County will somehow interfere with or compete with their as yet unformulated plan to create a landfill district. Yet only Shelby is even in Toole County, which itself has opted out of the district. The Commission has found that there is no existing authority with which Applicant will compete. If or when there is a future application for Class D authority overlapping that granted in this application, then the Commission may consider competition as a factor.

The Commission finds that this application to expand present Class D garbage hauling authority to encompass all of Toole County should be granted.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.
3. Applicant has demonstrated a public demand or need for proposed expanded Class D service in Toole County, Montana.

4. Applicant has demonstrated that there are no existing carriers to provide this service and competition is not a factor.

5. Applicant has demonstrated fitness to provide this service.

6. Following hearing on the application and based upon the evidence in the record, the Commission concludes that public convenience and necessity require the granting of the application herein.

ORDER

NOW THEREFORE IT IS ORDERED that the application in Docket No. T-9539 is granted.

Done and Dated this 15th day of August, 1990 by a vote of

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

JOHN B. DRISCOLL, Commissioner

REX MANUEL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.